

AMENDED IN SENATE JULY 15, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2540

Introduced by Assembly Member De La Torre

February 19, 2010

An act to amend ~~Section 790.03~~ of Sections 790.03, 790.035, and 10400 of, and to add Section 12739.06 to, the Insurance Code, relating to health insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2540, as amended, De La Torre. Health insurance: postclaims underwriting: unfair and deceptive practices.

Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits a health insurer from engaging in postclaims underwriting, as defined, and requires an insurer that willfully violates that provision to pay a \$118 penalty to the state.

Existing law prohibits any person in the state from engaging in any trade practices that are defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance *and makes a person who engages in those practices liable to the state for a civil penalty not to exceed \$5,000 or \$10,000, as specified.*

This bill would ~~add~~ include engaging in health insurance postclaims underwriting, as defined, to the trade practices that are defined as an unfair ~~methods~~ method of competition or unfair or deceptive ~~acts~~ act or ~~practices~~ practice in the business of insurance. *The bill would specify the penalties that could be levied on a person who engages in postclaims underwriting, as specified, and would require that the amount by which*

a penalty exceeds \$118 be deposited in the Major Risk Medical Insurance Fund to be used, upon appropriation by the Legislature, for the California Major Risk Medical Insurance Program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 790.03 of the Insurance Code is amended
2 to read:

3 790.03. The following are hereby defined as unfair methods
4 of competition and unfair and deceptive acts or practices in the
5 business of insurance.

6 (a) Making, issuing, circulating, or causing to be made, issued,
7 or circulated, any estimate, illustration, circular, or statement
8 misrepresenting the terms of any policy issued or to be issued or
9 the benefits or advantages promised thereby or the dividends or
10 share of the surplus to be received thereon, or making any false or
11 misleading statement as to the dividends or share of surplus
12 previously paid on similar policies, or making any misleading
13 representation or any misrepresentation as to the financial condition
14 of any insurer, or as to the legal reserve system upon which any
15 life insurer operates, or using any name or title of any policy or
16 class of policies misrepresenting the true nature thereof, or making
17 any misrepresentation to any policyholder insured in any company
18 for the purpose of inducing or tending to induce the policyholder
19 to lapse, forfeit, or surrender his or her insurance.

20 (b) Making or disseminating or causing to be made or
21 disseminated before the public in this state, in any newspaper or
22 other publication, or any advertising device, or by public outcry
23 or proclamation, or in any other manner or means whatsoever, any
24 statement containing any assertion, representation, or statement
25 with respect to the business of insurance or with respect to any
26 person in the conduct of his or her insurance business, which is
27 untrue, deceptive, or misleading, and which is known, or which
28 by the exercise of reasonable care should be known, to be untrue,
29 deceptive, or misleading.

30 (c) Entering into any agreement to commit, or by any concerted
31 action committing, any act of boycott, coercion, or intimidation

1 resulting in or tending to result in unreasonable restraint of, or
2 monopoly in, the business of insurance.

3 (d) Filing with any supervisory or other public official, or
4 making, publishing, disseminating, circulating, or delivering to
5 any person, or placing before the public, or causing directly or
6 indirectly, to be made, published, disseminated, circulated,
7 delivered to any person, or placed before the public any false
8 statement of financial condition of an insurer with intent to deceive.

9 (e) Making any false entry in any book, report, or statement of
10 any insurer with intent to deceive any agent or examiner lawfully
11 appointed to examine into its condition or into any of its affairs,
12 or any public official to whom the insurer is required by law to
13 report, or who has authority by law to examine into its condition
14 or into any of its affairs, or, with like intent, willfully omitting to
15 make a true entry of any material fact pertaining to the business
16 of the insurer in any book, report, or statement of the insurer.

17 (f) Making or permitting any unfair discrimination between
18 individuals of the same class and equal expectation of life in the
19 rates charged for any contract of life insurance or of life annuity
20 or in the dividends or other benefits payable thereon, or in any
21 other of the terms and conditions of the contract.

22 This subdivision shall be interpreted, for any contract of ordinary
23 life insurance or individual life annuity applied for and issued on
24 or after January 1, 1981, to require differentials based upon the
25 sex of the individual insured or annuitant in the rates or dividends
26 or benefits, or any combination thereof. This requirement is
27 satisfied if those differentials are substantially supported by valid
28 pertinent data segregated by sex, including, but not necessarily
29 limited to, mortality data segregated by sex.

30 However, for any contract of ordinary life insurance or individual
31 life annuity applied for and issued on or after January 1, 1981, but
32 before the compliance date, in lieu of those differentials based on
33 data segregated by sex, rates, or dividends or benefits, or any
34 combination thereof, for ordinary life insurance or individual life
35 annuity on a female life may be calculated as follows: (a) according
36 to an age not less than three years nor more than six years younger
37 than the actual age of the female insured or female annuitant, in
38 the case of a contract of ordinary life insurance with a face value
39 greater than five thousand dollars (\$5,000) or a contract of
40 individual life annuity; and (b) according to an age not more than

1 six years younger than the actual age of the female insured, in the
2 case of a contract of ordinary life insurance with a face value of
3 five thousand dollars (\$5,000) or less. "Compliance date" as used
4 in this paragraph shall mean the date or dates established as the
5 operative date or dates by future amendments to this code directing
6 and authorizing life insurers to use a mortality table containing
7 mortality data segregated by sex for the calculation of adjusted
8 premiums and present values for nonforfeiture benefits and
9 valuation reserves as specified in Sections 10163.1 and 10489.2
10 or successor sections.

11 Notwithstanding the provisions of this subdivision, sex-based
12 differentials in rates or dividends or benefits, or any combination
13 thereof, shall not be required for (1) any contract of life insurance
14 or life annuity issued pursuant to arrangements that may be
15 considered terms, conditions, or privileges of employment as these
16 terms are used in Title VII of the Civil Rights Act of 1964 (Public
17 Law 88-352), as amended, and (2) tax sheltered annuities for
18 employees of public schools or of tax exempt organizations
19 described in Section 501(c)(3) of the Internal Revenue Code.

20 (g) Making or disseminating, or causing to be made or
21 disseminated, before the public in this state, in any newspaper or
22 other publication, or any other advertising device, or by public
23 outcry or proclamation, or in any other manner or means whatever,
24 whether directly or by implication, any statement that a named
25 insurer, or named insurers, are members of the California Insurance
26 Guarantee Association, or insured against insolvency as defined
27 in Section 119.5. This subdivision shall not be interpreted to
28 prohibit any activity of the California Insurance Guarantee
29 Association or the commissioner authorized, directly or by
30 implication, by Article 14.2 (commencing with Section 1063).

31 (h) Knowingly committing or performing with such frequency
32 as to indicate a general business practice any of the following
33 unfair claims settlement practices:

34 (1) Misrepresenting to claimants pertinent facts or insurance
35 policy provisions relating to any coverages at issue.

36 (2) Failing to acknowledge and act reasonably promptly upon
37 communications with respect to claims arising under insurance
38 policies.

1 (3) Failing to adopt and implement reasonable standards for the
2 prompt investigation and processing of claims arising under
3 insurance policies.

4 (4) Failing to affirm or deny coverage of claims within a
5 reasonable time after proof of loss requirements have been
6 completed and submitted by the insured.

7 (5) Not attempting in good faith to effectuate prompt, fair, and
8 equitable settlements of claims in which liability has become
9 reasonably clear.

10 (6) Compelling insureds to institute litigation to recover amounts
11 due under an insurance policy by offering substantially less than
12 the amounts ultimately recovered in actions brought by the
13 insureds, when the insureds have made claims for amounts
14 reasonably similar to the amounts ultimately recovered.

15 (7) Attempting to settle a claim by an insured for less than the
16 amount to which a reasonable person would have believed he or
17 she was entitled by reference to written or printed advertising
18 material accompanying or made part of an application.

19 (8) Attempting to settle claims on the basis of an application
20 that was altered without notice to, or knowledge or consent of, the
21 insured, his or her representative, agent, or broker.

22 (9) Failing, after payment of a claim, to inform insureds or
23 beneficiaries, upon request by them, of the coverage under which
24 payment has been made.

25 (10) Making known to insureds or claimants a practice of the
26 insurer of appealing from arbitration awards in favor of insureds
27 or claimants for the purpose of compelling them to accept
28 settlements or compromises less than the amount awarded in
29 arbitration.

30 (11) Delaying the investigation or payment of claims by
31 requiring an insured, claimant, or the physician of either, to submit
32 a preliminary claim report, and then requiring the subsequent
33 submission of formal proof of loss forms, both of which
34 submissions contain substantially the same information.

35 (12) Failing to settle claims promptly, where liability has become
36 apparent, under one portion of the insurance policy coverage in
37 order to influence settlements under other portions of the insurance
38 policy coverage.

39 (13) Failing to provide promptly a reasonable explanation of
40 the basis relied on in the insurance policy, in relation to the facts

1 or applicable law, for the denial of a claim or for the offer of a
2 compromise settlement.

3 (14) Directly advising a claimant not to obtain the services of
4 an attorney.

5 (15) Misleading a claimant as to the applicable statute of
6 limitations.

7 (16) Delaying the payment or provision of hospital, medical,
8 or surgical benefits for services provided with respect to acquired
9 immune deficiency syndrome or AIDS-related complex for more
10 than 60 days after the insurer has received a claim for those
11 benefits, where the delay in claim payment is for the purpose of
12 investigating whether the condition preexisted the coverage.
13 However, this 60-day period shall not include any time during
14 which the insurer is awaiting a response for relevant medical
15 information from a health care provider.

16 (i) Canceling or refusing to renew a policy in violation of
17 Section 676.10.

18 (j) Engaging in postclaims underwriting as defined by Section
19 10384.

20 *SEC. 2. Section 790.035 of the Insurance Code is amended to*
21 *read:*

22 790.035. (a) ~~Any~~ A person who engages in ~~any~~ an unfair
23 method of competition or ~~any~~ an unfair or deceptive act or practice
24 defined in Section 790.03 is liable to the state for a civil penalty
25 to be fixed by the commissioner, not to exceed five thousand
26 dollars (\$5,000) for each act, or, if the act or practice was willful,
27 a civil penalty not to exceed ten thousand dollars (\$10,000) for
28 each act. The commissioner shall have the discretion to establish
29 what constitutes an act. However, when the issuance, amendment,
30 or servicing of a policy or endorsement is inadvertent, all of those
31 acts shall be a single act for the purpose of this section.

32 (b) The penalty imposed by this section shall be imposed by
33 and determined by the commissioner as provided by Section
34 790.05. The penalty imposed by this section is appealable by means
35 of any remedy provided by Section 12940 or by Chapter 5
36 (commencing with Section 11500) of Part 1 of Division 3 of Title
37 2 of the Government Code.

38 (c) *With respect to a penalty imposed under this section against*
39 *a person who engages in an unfair method of competition or unfair*
40 *or deceptive act or practice as defined in subdivision (j) of Section*

1 790.03, the amount by which the penalty exceeds one hundred
2 eighteen dollars (\$118) shall be deposited in the Major Risk
3 Medical Insurance Fund created pursuant to Section 12739 to be
4 used, upon appropriation by the Legislature, for the California
5 Major Risk Medical Insurance Program for the purposes specified
6 in Section 12739.1.

7 SEC. 3. Section 10400 of the Insurance Code is amended to
8 read:

9 10400. ~~Any~~(a) A person who willfully ~~violating~~ violates any
10 provision of this chapter or order of the commissioner made in
11 accordance therewith shall forfeit to the people of this state a sum
12 not to exceed one hundred eighteen dollars (\$118) for each ~~such~~
13 violation, which sum may be recovered by civil action. The
14 commissioner may also suspend or revoke the license of an insurer
15 or agent for any such willful violation.

16 (b) An insurer that violates Section 10384 shall not be subject
17 to the monetary penalty described in subdivision (a) where the
18 insurer has been assessed a civil penalty for that violation under
19 subdivision (j) of Section 790.03 and Section 790.035.

20 SEC. 4. Section 12739.06 is added to the Insurance Code, to
21 read:

22 12739.06. Notwithstanding Section 12739, funds placed in the
23 Major Risk Medical Insurance Fund pursuant to subdivision (c)
24 of Section 790.035 shall not be continuously appropriated.